

V. REMARKS

Claims 1-8 are pending in this application. By this amendment, claims 1, 2 and 4 have been amended. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 1-8 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite. Claims 1 and 2 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Brendel *et al.* (U.S. Patent No. 5,774,660), hereafter “Brendel.” Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Brendel in view of Pavan (U.S. Patent No. 6,801,943 B1), hereafter “Pavan.” Claims 5-8 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Brendel in view of Pavan and further in view of Colby *et al.* (U.S. Patent No. 6,625,643 B1).

A. OBJECTIONS TO THE DRAWINGS

The Office has objected to the drawings because they allegedly include reference characters not mentioned in the description. In response, Applicants have amended the specification to include the reference characters. Accordingly, Applicants request that the Office withdraw the objection.

B. OBJECTIONS TO THE SPECIFICATION AND CLAIMS

The Office has objected to the specification and claims for informalities. In response, Applicants have amended the drawings, specification and claims to comply with the Office's requests with the following exceptions that are hereby traversed. First, with respect to the term "http header" on page 8 line 1, Applicants assert that this term applies to a generic http header, and not the new NCS-Control http header. Furthermore, with respect to the colon at the end of line 4 in claim 1, Applicants believe that it is not unnecessary as asserted by the Office. Accordingly, Applicants respectfully request that the Office withdraw its rejections.

C. REJECTION OF CLAIMS 1-8 UNDER 35 U.S.C. §112

The Office has asserted that claims 1-8 are indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regards as the invention. Specifically, the Office states that, with respect to claim 1, the steps described in the body of the claim does not perform the method for enhancing load controlling as claimed in the preamble of the claim. In response, Applicants have amended claim 1 to recite "...issuing load balancing instructions to said NCS." Applicants assert that this amendment further clarifies the invention. Accordingly, Applicants request that the rejection be withdrawn.

With respect to claims 1 and 2, the Office states that there is insufficient antecedent basis for certain limitations in the claims. In response, Applicants have amended claim 1 to recite "...complying with said instructions upon receipt." Applicants have further amended claim 2 to recite "...optionally including a filter to limit the scope of application of said directives."

Applicants assert that these amendments further clarify the invention. Accordingly, Applicants request withdrawal of the rejection.

With respect to claims 5 and 6, the Office also states there is insufficient antecedent basis for certain limitations in the claims. Applicants respectfully traverse these rejections. Specifically, with respect to claim 5, Applicants assert that the limitation “said information sharing” in line 4 refers back to the limitation “an information sharing” in line 2 of claim 5. Furthermore, with respect to claim 6, Applicants assert that the limitation “said resources” in line 3 refers back to the limitation “resources” in line 2 of claim 6. Accordingly, Applicants request that the Office’s rejection be withdrawn.

With respect to claim 8, the Office alleges that it is not further limiting. Applicants respectfully traverse this rejection. Specifically, Applicants assert that claim 8 adds the limitation “a computer readable medium comprising instructions.” Accordingly, Applicants respectfully request that the Office withdraw the rejection.

D. REJECTION OF CLAIMS 1 and 2 UNDER 35 U.S.C. §102(e)

With regard to the 35 U.S.C. §102(e) rejection over Brendel, Applicants assert that Brendel does not teach each and every feature of the claimed invention. For example, with respect to independent claim 1, Applicants submit that Brendel fails to teach, *inter alia*, in any one server out of said plurality of individual servers: issuing load balancing instructions to said NCS. The passage in Brendel cited by the Office teaches that “...the server closes the connection by sending a finish (FIN) packet which is intercepted and sent to the load balancer.” Col. 13, lines 9-11. However, the finish (FIN) packet of Brendel is not an instruction, but is instead a

status packet that indicates that the server is finished. Col. 13, line 9. Furthermore, assuming, *arguendo*, that the finish (FIN) packet of Brendel is an instruction, the finish packet is not a load balancing instruction. Still further, the finish (FIN) packet of Brendel is not issued by the server to the NCS. Instead, outgoing responses in Brendel, such as the finish (FIN) packet, do not go through the load-balancer but instead bypass the load-balancer. Col. 9, lines 18-21 and 60-61. Accordingly, the server in Brendel does not send the finish (FIN) packet to the load-balancer as asserted by the Office, but instead, the packet is intercepted by another entity, such as the external routers of Brendel, and redirected to the load-balancer. Col. 13, lines 9-11, col. 9, lines 26-29. Nowhere does Brendel teach that a server issues instructions to the load-balancer. In contrast, the present invention includes "...in any one server out of said plurality of individual servers: issuing load balancing instructions to said NCS." Claim 1. As such, the server as included in the claimed invention does not merely send a finish (FIN) packet as in Brendel, but instead issues instructions to the NCS. Furthermore, in contrast to the finish (FIN) packet of Brendel, the instructions as included in the claimed invention are load balancing instructions. Additionally, the load balancing instructions as included in the claimed invention are not sent to a client, intercepted, and redirected to a load-balancer as is the finish (FIN) packet in Brendel, but are rather issued in any one server to the NCS. Accordingly, the finish (FIN) packet in Brendel is not equivalent to the load balancing instructions as included in the claimed invention. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

With further respect to independent claim 1, Applicants respectfully submit that Brendel also fails to teach receiving said instructions in said NCS from said any one server; and complying with said instructions upon receipt. As stated above, the Office attempts to equate the

instruction as included in the claimed invention with the finish (FIN) packet in Brendel.

However, the passage cited by the Office states "...the server then performs the action requested [by the client browser], such as opening and transmitting another web page to browser." Col. 8, lines 44-56. As such, the action performed by the server is not the finish (FIN) packet sent by a server or a load balancing instruction issued from a server but instead is an action requested by a client browser. The present invention, in contrast, includes "...receiving said instructions in said NCS from said any one server; and complying with said instructions upon receipt." Claim 1. As such, the instructions that are complied with as included in the claimed invention, are received in said NCS from said any one server, not from a client as in Brendel. Additionally, the instructions that are complied with as included in the claimed invention are not two unrelated occurrences that include a finish (FIN) packet sent from a server to a client and a request sent from a client to a server, but instead are the same instructions that are received in the NCS from the any one server. As such, the instructions as included in the claimed invention are not equivalent to the unrelated finish (FIN) packet and request in Brendel. Accordingly, Applicants request that the rejection be withdrawn.

With respect to dependent claims, Applicants herein incorporate the arguments presented above with respect to independents from which the claims depend. Furthermore, Applicants submit that all dependant claims are allowable based on their own distinct features. Since the cited art does not teach each and every feature of the claimed invention, Applicants respectfully request withdrawal of this rejection.

E. REJECTION OF CLAIMS 3-8 UNDER 35 U.S.C. §103(a)

With regard to the 35 U.S.C. §103(a) rejection over Brendel in view of Pavan and Colby, Applicants assert that there is no motivation or suggestion to combine Brendel and Pavan. Specifically, as stated above, Brendel deals with load-balancing in a client-server environment to balance the load on a number of servers. In contrast, Pavan deals with scheduling real time applications in a network environment “for the purpose of achieving correct deadline and priority based scheduling of network packets.” Col. 2, lines 19-26. Accordingly, there is no intrinsic motivation or suggestion in either of the references or extrinsic motivation or suggestion to use the type of temporal scheduling aspects of Pavan with the structural load-balancing of Brendel. Accordingly, Applicants respectfully submit that the Office has failed to prove a *prima facie* case of obviousness and respectfully request that the Office’s rejection be withdrawn.


With regard to the Office's other arguments regarding dependent claims, Applicants herein incorporate the arguments presented above with respect to independent claims listed above. In addition, Applicants submit that all dependant claims are allowable based on their own distinct features. However, for brevity, Applicants will forego addressing each of these rejections individually, but reserves the right to do so should it become necessary. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

VI. CONCLUSION

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

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II. AMENDMENTS TO THE DRAWINGS:

FIG. 4 (drawing page 4/5) has been changed to remove the reference number from the bottommost request arrow and to extend the bottommost request arrow such that it points to Mercury as indicated in the specification.